

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DAVID LAMAR JOHNSON, SR.,)	
)	
Plaintiff,)	(WO)
)	
v.)	CASE NO. 1:05cv281-F
)	
WACHOVIA BANK,)	
NATIONAL ASSOCIATION,)	
)	
Defendant.)	

ORDER

On August 23, 2005, the Magistrate Judge filed a Recommendation (Doc. #26) in this case to which no timely objections have been filed. Upon an independent review of the file in this case and upon consideration of the Recommendation of the Magistrate Judge which is hereby ADOPTED, it is

ORDER, JUDGMENT and DECREE of the court that:

(1) Defendant's Motion to Dismiss (Doc. # 12) is GRANTED and all of Plaintiff's claims in this action are DISMISSED WITHOUT PREJUDICE because this Court lacks subject matter jurisdiction.

(2) Both the Alternative Motion to Stay and Motion to Compel (Doc. #12) are DENIED as MOOT.

(3) Plaintiff's Motion to Amend (Doc. # 24) is DENIED as MOOT. While the Court is required – by Eleventh Circuit case law and by Rule 15(a) of the Federal Rules of Civil

Procedure – to allow liberal amendment of pleadings, “a court may consider the futility of the amendment.” *Grayson v. K-Mart Corporation*, 79 F.3d 1086, 1110 (11th Cir. 1996) (citations omitted). Because the Court is without jurisdiction to hear this case, Plaintiff’s attempt to amend the complaint is futile.

(4) Plaintiff’s motion for a pre-trial conference and trial by jury (Doc. # 25) is DENIED as MOOT.

(5) Plaintiff’s motion for summary judgment in his favor on the merits of his claims (Doc. # 25) is DENIED, as this court lacks jurisdiction to entertain those claims.

Done this 12th day of September, 2005.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE